



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **JUL 28 2014** OFFICE: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

On the Form I-129, Petition for a Nonimmigrant Worker, and supporting documentation, the petitioner describes itself as a network of multi-sport training facilities established in 2012. In order to employ the beneficiary in what it designates as a professional tennis coach position, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).¹

The director denied the petition, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, counsel for the petitioner asserts that the director's basis for denial of the petition was erroneous and contends that the petitioner satisfied all evidentiary requirements.

The record of proceeding before us contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) counsel's response to the RFE; (4) the notice of decision; and (5) the Form I-290B, Notice of Appeal or Motion, and supporting materials. We reviewed the record in its entirety before issuing our decision.²

For the reasons that will be discussed below, we agree with the director that the petitioner has not established eligibility for the benefit sought. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

I. FACTUAL AND PROCEDURAL BACKGROUND

In the petition signed on March 19, 2013, the petitioner indicates that it is seeking the beneficiary's services as a professional tennis coach on a full-time basis at the rate of pay of \$35,000 per year. In the March 11, 2013 letter of support, the petitioner states that the beneficiary will be responsible for the following duties:

- Prepare and deliver tennis training program for all student-athletes.
- Assess the skill development of each student-athlete, and partner with school staff and performance coaches to ensure their ongoing comprehensive development.

¹ It must be noted for the record that the Form I-129 petition indicates that the job title of the proffered position is "Professional Tennis Coach." The Labor Condition Application (LCA) indicates that the job title of the proffered position is "Tennis Coach." With the initial petition, the petitioner submitted an internal job posting for a "Full-Time Tennis Coach" and an advertisement for a "Full-Time Juinor Tennis Coach." In addition, in the July 9, 2013 letter, submitted in response to the director's request for evidence (RFE), the petitioner refers to the proffered position as "Junior Tennis Coach" and submitted a job posting for a "Junior Tennis Coach" and for a "Part-Time Tennis Coach." No explanation for the variances was provided.

² We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

- Assist with the psychological preparation of the student-athlete in both pre-match and post-match.
- Develop motivational approaches to practice and matches.
- Work to develop comprehensive knowledge of tennis in decision-making, handling authority and setting and meeting objectives.
- Interact with the student-athlete as a mentor and as an educator of the sport.
- Partner with the student-athlete's parent/guardian regarding their overall development.
- Effectively communicate to student-athletes and their parents/guardians.
- Assures that proper safety is maintained.
- Assists in the college placement of the student-athlete.
- Travel to tournaments and other events as needed to coach current students and represent the company in marketing activities.
- Assist in the recruiting of prospective student-athletes.
- Adhere to all company policies, procedures and business ethic codes.
- Perform other duties as assigned.

The petitioner also states that "a 'Bachelor's or higher degree in Sports Management or Business Administration, or a related sports or business related degree; or the equivalent'" is the minimum educational requirement for the proffered position.

With the Form I-129 petition, the petitioner submitted a copy of the beneficiary's Master of Education degree and Bachelor of Business Administration degree from [REDACTED] in [REDACTED] Florida.

In support of the H-1B petition, the petitioner also submitted the following:

- A Labor Condition Application (LCA). We note that the LCA designation for the proffered position corresponds to the occupational classification of "Coaches and Scouts" - SOC (ONET/OES Code) 27-2022, at a Level II (qualified) wage.
- Documentation regarding the petitioner's merger with [REDACTED]
- Printouts from the petitioner's website.
- A copy of the petitioner's internal job posting for a full-time tennis coach, dated March 2012.
- An excerpt entitled "Coaches and Scouts" from the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook* (hereinafter the *Handbook*), 2012-13 Edition.
- An excerpt entitled "Summary Report for: 27-2022.00 – Coaches and Scouts" from the Occupational Information Network (O*NET) OnLine.

- A printout from [REDACTED] website.
- Job vacancy announcements, including the petitioner's job postings for a number of positions.
- Printouts of the petitioner's tennis coaching staff bios from its website.

The director found the evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on May 24, 2013. The petitioner was asked to submit probative evidence to establish that a specialty occupation position exists for the beneficiary. The director outlined the specific evidence to be submitted.

On July 11, 2013, counsel responded to the RFE by submitting a brief and additional evidence. Specifically, counsel submitted, in part: (1) the resumes of coaches at [REDACTED] (2) the petitioner's job postings for various positions; (3) the resumes of the petitioner's tennis coaches;³ and (4) the petitioner's payroll register for the period ending June 30, 2013. The petitioner did not provide a more detailed description of the work to be performed by the beneficiary.⁴

The director reviewed the information provided by counsel to determine whether the petitioner had established eligibility for the benefit sought. Although the petitioner claimed that the beneficiary would serve in a specialty occupation, the director determined that the petitioner failed to establish how the beneficiary's immediate duties would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. The director denied the petition on July 29, 2013. Counsel submitted an appeal of the denial of the H-1B petition. With the appeal, counsel submitted a brief and additional evidence.⁵

³ It must be noted that with the initial petition, the petitioner provided the bios of 14 of its tennis coaches. In response to the RFE, counsel claims that the petitioner employs 23 tennis coaches. However, counsel submitted resumes for 25 individuals in response to the RFE. No explanation for the inconsistency in number of tennis coaches was provided by the petitioner or counsel.

⁴ Rather, counsel reiterated the duties that were provided by the petitioner in the initial submission.

⁵ With regard to the new documentation submitted on appeal that was encompassed by the director's RFE, we note that this evidence is outside the scope of the appeal. The regulations indicate that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary in the adjudication of the petition. See 8 C.F.R. §§ 103.2(b)(8); 214.2(h)(9)(i). The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. § 103.2(b)(1), (8), and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Under the circumstances, we need not consider the sufficiency of such evidence requested by the director in the RFE but submitted for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaighena*, 19 I&N Dec. 533. Nevertheless, for thoroughness we have analyzed this documentation in our *de novo* review of this matter.

II. LAW AND ANALYSIS

A. Requirements for the Proffered Position

Preliminarily, we find an additional issue that was not identified by the director which precludes the approval of the H-1B petition. Consequently, even if the petitioner overcame the ground for the director's denial of the petition (which it has not), it could not be found eligible for the benefit sought.

In the instant case, the petitioner states that the proffered position requires a "Bachelor's or higher degree in Sports Management or Business Administration, or a related sports or business related degree, or the equivalent." It must be noted that the petitioner's claim that a bachelor's degree in "Business Administration" is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As will be discussed in more detail below, U.S. Citizenship and Immigration Services (USCIS) interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).⁶

⁶ Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass.2000); *Shanti*, 36 F. Supp.2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

Id.

Again, the petitioner in this matter claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business administration. This assertion is tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the petition denied on this basis alone.

B. Opinion Letter Submitted on Appeal

On appeal, counsel asserts that the petitioner's degree requirement is common to the industry and that its business activity is very similar to a university or college and that the duties of the proffered position are specialized and complex. Counsel submits a letter from [REDACTED], an Executive Director from the [REDACTED], in support of this assertion. We again observe, that under the circumstances, we need not consider the sufficiency of this evidence submitted for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). However, for thoroughness we will discuss the August 14, 2013 letter prepared by [REDACTED] in our *de novo* review of this matter.

In her letter, Ms. [REDACTED] notes that she was asked to advise on two issues: (1) whether a coach or sports instructor position at the petitioner is comparable to a sports instructor or coach position in a college or university, and (2) whether the petitioner's position of coach or sports instructor involves duties that are so complex and specialized that knowledge required to perform the duties is usually associated with the attainment of a bachelor's degree in a subject related to the occupation.

In that regard, Ms. [REDACTED] offers her opinion that the petitioner is a similar organization to a college or university in terms of the functions performed by coaches and sports instructors. Ms. [REDACTED] lists twelve parallels between the petitioner and post-secondary institutions and their athletic departments. Ms. [REDACTED] opines that the size of the petitioner's staff, student population and budget is more in line with an NCAA Divisions I school, the largest and most competitive division, than any other kind of institution in the United States. Further, Ms. [REDACTED] opines that the duties as a coach or sports instructor at the petitioner is very similar to working as a coach or sports instructor at a college or university – that the organizations and duties are similar.

Ms. [REDACTED] however, other than listing without citation to source, the twelve elements she finds parallel between the petitioner and any college or university, does not provide any analysis as to the claimed shared general characteristics of the petitioner and a college or university.⁷

⁷ We note that the petitioner in this matter identified its business operations under the North American Industry Classification System (NAICS) code 611620. This NAICS code is designated for "Sports and Recreation Instruction," an industry comprising establishments primarily engaged in offering instruction in athletic activities to groups of individuals. On the other hand, a college, university or professional school is designated under the NAICS code 611210, an industry comprising establishments primarily engaged in furnishing academic courses and granting degrees at the baccalaureate or graduate level. *See* U.S. Dep't of Commerce, U.S. Census Bureau, 2012 NAICS Definition, on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited July 25, 2014). Ms. [REDACTED] does not address the primary differences of business operations found within these two distinct industries.

Ms. [REDACTED] also lists the duties of the proffered position in bullet-point fashion, verbatim from the petitioner's support letter. She does not discuss the duties of the proffered position in any substantive detail. We note that Ms. [REDACTED] also adds "ancillary duties" related to project coordination and management, marketing, business development and obtaining new students for the petitioner. However, she does not explain where or how she obtained the list of "ancillary duties."

We note that Ms. [REDACTED] provides a summary of her qualifications, including her professional experience. For example, she states that she is currently an adjunct professor at [REDACTED] and in the sport management programs at [REDACTED] and the [REDACTED] and that previously she was Deputy Commissioner and Executive Vice President of the [REDACTED]. Based upon a complete review of Ms. [REDACTED] report, however, she has failed to provide sufficient information regarding the basis of her expertise on either of the issues upon which her advice was solicited. The documentation provided does not establish her expertise pertinent to assessing the similarities between the petitioner and a university or the requirements to perform the duties of the proffered position. Without further clarification, it is not apparent how her education, training, skills or experience would translate to expertise or specialized knowledge regarding the similarities between the petitioner and a university or college, the duties of the position or any asserted parallel position, and any educational requirements inherent in the duties of the position proffered here.

Ms. [REDACTED] repeats the list of duties outlined by the petitioner for the proffered position; however, there is no indication that she possesses any knowledge of the petitioner's proffered position beyond this information. She does not demonstrate or assert in-depth knowledge of the petitioner's specific business operations or how the duties of the position would actually be performed in the context of the petitioner's business enterprise. For instance, there is no evidence that Ms. [REDACTED] has visited the petitioner's business, observed the petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job. Her opinion does not relate her conclusions to specific, concrete aspects of this petitioner's business operations to demonstrate a sound factual basis for her conclusion about the similarities of the petitioner's business to a college or university or her conclusion that the duties of the proffered position are parallel to a college or university coach or sports instructor or her conclusion that the duties of the position proffered here involve specialized and complex knowledge. She does not reference any supporting authority or any empirical basis for her pronouncements.

Moreover, Ms. [REDACTED] does not provide a substantive, analytical basis for her opinion and ultimate conclusion.s Accordingly, the very fact that she attributes a degree requirement to such a generalized treatment of the proffered position undermines the credibility of her opinion. Again, her statements are not supported by copies or citations of research material that may have been used in developing her opinions. There is no indication that she has published any work or conducted any research or studies pertinent to the issues upon which she offered her opinion. In addition, Ms. [REDACTED] opinion letter does not cite specific instances in which her past opinions have been accepted or recognized as authoritative on these particular issues. She has not identified the specific

elements of her knowledge and experience that she may have applied in reaching her conclusions here.

Also, it must be noted that there is no indication that the petitioner and counsel advised Ms. [REDACTED] that the petitioner characterized the proffered position as a Level II wage on the LCA, indicating that it is a position for an employee who has a good understanding of the occupation but who will perform moderately complex tasks that require limited judgment.⁸ It appears that Ms. [REDACTED] would have found this information relevant for her opinion letter.⁹ Moreover, without this information, the petitioner has not demonstrated that Ms. [REDACTED] possessed the requisite information necessary to adequately assess the nature of the petitioner's position and appropriately compare similar positions based upon job duties and responsibilities.

In summary, for the reasons discussed above, we conclude that the opinion letter rendered by Ms. [REDACTED] is not probative evidence to establish the proffered position as a specialty occupation. The conclusions reached by Ms. [REDACTED] lack the requisite specificity and detail and are not supported by independent, objective evidence demonstrating the manner in which she reached such conclusions. We may, in our discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). As a reasonable exercise of our discretion we discount the advisory opinion letter as not probative evidence towards satisfying any criterion of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A). For efficiency's sake, we hereby incorporate the above discussion and analysis regarding the opinion letter into our discussion of each of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

C. Specialty Occupation

The primary issue for consideration is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable statutory and regulatory requirements.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and

⁸ See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

⁹ For example, Ms. [REDACTED] does not discuss the salaries of college-level coaches or sports instructors or cite to any source regarding such salaries and a comparison of those salaries to the salary of the position proffered here.

- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed position must also meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives

to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), USCIS consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F.3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The issue before us is whether the petitioner has provided sufficient evidence to establish that it would employ the beneficiary in a specialty occupation position. To make this determination, we turn to the record of proceeding. To ascertain the intent of a petitioner, USCIS must look to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, et cetera. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

As a preliminary matter to our analysis of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), we note that on appeal, counsel claims that "the law does not require a specific degree" for the position. Counsel appears to have overlooked or misinterpreted section 214(i)(1) of the Act, which clearly states that a specialty occupation requires in part the "attainment of a bachelor's or higher degree in the *specific specialty* (or its equivalent) as a minimum for entry into the occupation in the United States." (Emphasis added.) We here acknowledge counsel's reference to the line of reasoning followed by the U.S. district court in *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*, 839 F. Supp. 2d 985 (S.D. Ohio 2012), in support of his claim; however, upon review counsel's interpretation of the reasoning is not supported. In the *Residential Fin. Corp.* matter, the U.S.

district court found that "[t]he knowledge and not the title of the degree is what is important. Diplomas rarely come bearing occupation-specific majors. What is required is an occupation that requires highly specialized knowledge and a prospective employee who has attained the credentialing indicating possession of that knowledge."

We agree with the aforementioned proposition that "[t]he knowledge and not the title of the degree is what is important." In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, for example, would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added). For the reasons discussed below, however, the petitioner has failed to meet its burden and establish that the particular position offered in this matter requires a bachelor's or higher degree in a specific specialty, or its equivalent, that is directly related to the position's duties in order to perform those duties.

Further, counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*.¹⁰ We also note that, in contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in matters arising even within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before us, the analysis does not have to be followed as a matter of law. *Id.* at 719.

We also observe that the record of proceeding does not include any information with regard to the order of importance and/or frequency of occurrence with which the beneficiary will perform the generally stated functions and tasks. Thus, the record does not include which tasks are major functions of the proffered position and the frequency with which each of the duties would be performed (e.g., regularly, periodically or at irregular intervals). As a result, the petitioner has not established the primary and essential functions of the proffered position. In that regard, we also note that although the petitioner provides the same duties for the occupation, the petitioner identifies

¹⁰ It is noted that the district judge's decision in that case appears to have been based largely on the many factual errors made by the service center in its decision denying the petition. We further note that the service center director's decision was not appealed to the AAO. Based on the district court's findings and description of the record, if that matter had first been appealed through the available administrative process, we may very well have remanded the matter to the service center for a new decision for many of the same reasons articulated by the district court if these errors could not have been remedied by us in our *de novo* review of the matter.

the position proffered here as a professional tennis coach, a tennis coach, and a junior tennis coach. Thus, the expectations of the petitioner regarding the level of actual responsibilities of the position are in doubt.

Moreover, the petitioner's job description for the proffered position fails to convey either the substantive nature of the work that the beneficiary would actually perform, or any particular body of highly specialized knowledge that would have to be theoretically and practically applied to perform the proffered position. The petitioner did not provide sufficient details regarding the nature and scope of the beneficiary's employment or any substantive evidence regarding the actual work that the beneficiary would perform. Without a meaningful job description, the record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position requires a specialty occupation's level of knowledge in a specific specialty. The tasks as described fail to communicate (1) the actual work that the beneficiary would perform, (2) the complexity, uniqueness and/or specialization of the tasks, and/or (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty.

Nevertheless, we will address each criterion of the regulations for the purpose of providing a comprehensive discussion on this issue. For an H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. To make its determination whether the proffered position qualifies as a specialty occupation, we first turn to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by us when determining these criteria include: whether the *Handbook*, on which we routinely rely for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

We recognize the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹¹ As previously mentioned, the petitioner asserts in the LCA that the proffered position falls under the occupational category "Coaches and Scouts."

We reviewed the chapter of the *Handbook* entitled "Coaches and Scouts," including the sections

¹¹ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. Our references to the *Handbook* are to the 2014 – 2015 edition available online. We hereby incorporate into the record of proceeding the chapter of the *Handbook* regarding "Coaches and Scouts."

regarding the typical duties and requirements for this occupational category. However, the *Handbook* does not indicate that "Coaches and Scouts" comprise an occupational group for which normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent.

The subchapter of the *Handbook* entitled "How to Become a Coach or Scout" states, in part, the following about this occupation:

Coaches and scouts typically need a bachelor's degree. They must also have extensive knowledge of the sport. Coaches typically gain this knowledge through their own experiences playing the sport at some level. Although previous playing experience may be beneficial, it is not required for most scouting jobs.

Education

High schools typically hire teachers at the school for most coaching jobs. If no suitable teacher is found, schools hire a qualified candidate from outside the school. For more information on education requirements for teachers, see the profile on high school teachers.

College and professional coaches must usually have a bachelor's degree. This degree can typically be in any subject. However, some coaches may decide to study exercise and sports science, physiology, kinesiology, nutrition and fitness, physical education, and sports medicine.

Scouts must also typically have a bachelor's degree. Some scouts decide to get a degree in business, marketing, sales, or sports management.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Coaches and Scouts, available on the Internet at <http://www.bls.gov/ooh/entertainment-and-sports/coaches-and-scouts.htm#tab-4> (last visited July 25, 2014).

When reviewing the *Handbook*, we must note that the petitioner designated the proffered position as a Level II position (out of four possible wage-levels). This designation is indicative that the beneficiary is expected to have a good understanding of the occupation and that she will perform moderately complex tasks that require limited judgment relative to others within the occupation.¹²

¹² The "Prevailing Wage Determination Policy Guidance" issued by DOL provides a description of the wage levels. A Level II wage rate is described by DOL as follows:

Level II (qualified) wage rates are assigned to job offers for qualified employees who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment. An indicator that the job request warrants a wage determination at Level II would be a requirement for years of education and/or experience that are generally required as described in the O*NET Job Zones.

The *Handbook* does not support the assertion that a baccalaureate or higher degree *in a specific specialty*, or its equivalent, is normally the minimum requirement for entry into the occupation. The *Handbook* indicates that college and professional coaches must usually have a bachelor's degree; however, that the degree can typically be in any subject. The *Handbook* does not indicate that any specific specialty is normally the minimum requirement for entry into these positions.¹³ Accordingly, the *Handbook* does not support the assertion that the proffered position falls under an occupational group for which at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry.

In the March 11, 2013 letter of support, the petitioner references the O*NET OnLine Summary Report for the occupational category "Coaches and Scouts." We find that the O*NET is insufficient to establish that the position qualifies as a specialty occupation normally requiring at least a bachelor's degree in a specific specialty, or its equivalent. The O*NET indicates that the occupational category "Coaches and Scouts" has a designation of Job Zone 4. This indicates that a position requires considerable preparation. It does not, however, demonstrate that a bachelor's degree in any *specific specialty* is required, and does not, therefore, demonstrate that a position so designated is in a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). The O*NET OnLine Help Center provides a discussion of the Job Zone 4 designation and explains that this zone signifies only that most, but not all of the occupations within it, require a bachelor's degree. See O*NET OnLine Help Center at <http://www.onetonline.org/help/online/zones>. Further, the Help Center discussion confirms that a designation of Job Zone 4 does not report any requirements for particular majors or academic concentrations. Therefore, despite the petitioner's assertion to the contrary, the O*NET OnLine Summary Report is not probative evidence that the proffered position qualifies as a specialty occupation.

With the initial petition, the petitioner also submitted a printout from [REDACTED] website regarding the occupational category "Coaches and Scouts" in Florida. We reviewed the printout in its entirety. The printout indicates "[t]ypical education needed for entry: High school diploma or equivalent." Thus, the printout does not support a conclusion that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into coaches and scout positions.

See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

¹³ To demonstrate that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish in part that the position requires the attainment of a bachelor's or higher degree in a specific specialty or its equivalent. As discussed *supra*, USCIS has consistently interpreted the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Again, although a general-purpose bachelor's degree may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

On appeal, counsel submitted a publication titled [REDACTED] published in 2006 by the [REDACTED].⁴ This document sets out a number of standards and benchmarks for coaches. The document also provides a brief description of the information that should be included in basic-level, intermediate-level, and master-level courses for coaches. The document does not include any information or reference any college-level courses. Accordingly, this document does not contain probative evidence that a coaching position requires at least a bachelor's degree in a specific specialty or its equivalent as the normally minimum requirement for entry into the position.

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook* (or other objective, authoritative source) indicates that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not demonstrate that the position is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

Next, we will review the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

As stated earlier, in determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* (or other objective, authoritative source), reports a standard, industry-wide requirement of at least a bachelor's degree in a specific specialty, or its equivalent. Thus, we incorporate by reference our previous discussion on the matter.

With the initial petition, the petitioner submitted copies of job advertisements in support of the assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. However, upon review of the documents, we find that the petitioner's

¹⁴ Again, we need not consider the sufficiency of such evidence requested by the director in the RFE but submitted for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaigbena*, 19 I&N Dec. 533. Nevertheless, for thoroughness we have analyzed this document in our *de novo* review of this matter.

reliance on the job announcements is misplaced.

In the Form I-129 petition and supporting documentation, the petitioner stated that it is a network of multi-sport training facilities established in 2012. The petitioner further stated that it has 678 employees and a gross annual income of \$76 million. The petitioner indicated, without further explanation, that its net annual income is "Undisclosed." The petitioner designated its business operations under the North American Industry Classification System (NAICS) code 611620.¹⁵ This NAICS code is designated for "Sports and Recreation Instruction." The U.S. Department of Commerce, Census Bureau website describes this NAICS code by stating the following:

This industry comprises establishments, such as camps and schools, primarily engaged in offering instruction in athletic activities to groups of individuals. Overnight and day sports instruction camps are included in this industry.

U.S. Dep't of Commerce, U.S Census Bureau, 2012 NAICS Definition, 611620 – Sports and Recreation Instruction, on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited July 25, 2014).

For the petitioner to establish that an organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such evidence, documentation submitted by a petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and the organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). Notably, it is not sufficient for the petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion.¹⁶

Upon review of the documentation, the petitioner fails to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

For instance, the petitioner submitted job postings placed by various colleges and universities. Without further information, the advertisements appear to be for organizations that are not similar to the petitioner and the petitioner has not provided any probative evidence to suggest otherwise. Consequently, the record is devoid of sufficient information regarding these advertising employers

¹⁵ According to the U.S. Census Bureau, the North American Industry Classification System (NAICS) is used to classify business establishments according to type of economic activity and each establishment is classified to an industry according to the primary business activity taking place there. See <http://www.census.gov/eos/www/naics/> (last visited July 25, 2014).

¹⁶ We here incorporate our discussion regarding Ms. [REDACTED] opinion letter above and reiterate that we decline to defer to her letter and ultimate conclusions, and further find that her opinion letter is not probative evidence towards satisfying any criterion of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A).

to conduct a legitimate comparison of the organizations to the petitioner. The petitioner failed to supplement the record of proceeding to establish that the advertising organizations are similar to it. That is, the petitioner has not provided any information regarding which aspects or traits (if any) it shares with the advertising organizations. Again, the petitioner must demonstrate the degree requirement is *common to the industry* in parallel position *among similar organizations*.

Moreover, some of the advertisements do not appear to be for parallel positions. More specifically, the petitioner submitted a posting by [REDACTED] which requires a degree and "five years of coaching and athletic administrative experience." The record also contains a posting by [REDACTED] which requires a degree and a "[m]inimum of 5 years NCAA Division I tennis coaching ranks or equivalent experience." As previously discussed, the petitioner designated the proffered position on the LCA through the wage level as a Level II position (out of four possible wage-levels). The advertised positions appear to be for more senior positions than the proffered position.

More importantly, the petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions are parallel to the proffered position. For instance, some of the advertising employers provided brief and/or vague job descriptions for the advertised positions. Thus, these advertisements do not contain sufficient information regarding the day-to-day duties, complexity of the job duties, supervisory duties (if any), independent judgment required, the amount of supervision received, or other relevant factors within the context of the advertising employers' business operations to make a legitimate comparison of the advertised positions to the proffered position.

As the documentation does not establish that the petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, not every deficit of every job posting has been addressed. The evidence does not establish that the proffered position qualifies as a specialty occupation under this criterion of the regulations.¹⁷

¹⁷ Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from these advertisements with regard to determining the common educational requirements for entry into parallel positions in similar companies. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position of professional tennis coach for companies that are similar to the petitioner and in the same industry requires a bachelor's or higher degree in a specific specialty, or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty, or its equivalent, for entry into the occupation in the United States.

In response to the director's RFE, the petitioner submitted the resumes of tennis coaches at [REDACTED] in support of the assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations.¹⁸ In the July 9, 2013 letter, the petitioner claims that the resumes are of junior tennis coaches at [REDACTED]. Notably, the petitioner did not submit the academic credentials of these individuals, e.g. copies of diplomas, transcripts. In addition, the petitioner did not provide any specific information regarding the job duties and day-to-day responsibilities for the junior tennis coach positions. There is also no information regarding the complexity of the job duties, supervisory duties (if any), independent judgment required or the amount of supervision received. Accordingly, there is insufficient information regarding the duties and responsibilities of these positions to determine whether they are the same or parallel to the proffered position. Moreover, we observe that the petitioner did not provide any documentary evidence to corroborate that [REDACTED] currently or in the past employed individuals in parallel positions to the proffered position.

Thus, based upon a complete review of the record, the petitioner has not established that a requirement for at least a bachelor's or higher degree in a specific specialty, or its equivalent, is (1) common to the petitioner's industry (2) in parallel positions (3) among organizations similar to the petitioner. Thus, for the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

We will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

In the instant case, the petitioner does not claim that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent. Nevertheless, we reviewed the record of proceeding to determine eligibility under this criterion of the regulations.

The record of proceeding contains information regarding the petitioner's business operations, including documentation regarding the petitioner's merger with [REDACTED] printouts from the petitioner's website, and the petitioner's payroll register for the period ending June 30, 2013. However, upon review of the record of proceeding, we find that the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position.

That is, the petitioner failed to demonstrate how the duties of the position as described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. We again note that on appeal, counsel submitted a document entitled [REDACTED]. " However, the petitioner did not submit information relevant to a detailed course of study

¹⁸ We note that a resume represents a claim by the individual regarding his/her credentials, rather than evidence to support that claim.

leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While general courses or certifications may be beneficial or in some cases even required to perform certain duties of a professional tennis coach position, the petitioner has failed to demonstrate how an established curriculum of courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here.

This is further evidenced by the petitioner's designation of the proffered position under the occupational category "Coaches and Scouts" as a Level II position on the LCA, indicating that it is a position for an employee who has a good understanding of the occupation but who will only perform moderately complex tasks that require limited judgment. Without further evidence, it is simply not credible that the petitioner's proffered position is complex or unique in comparison to others within the occupation, as such a position would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing wage. For instance, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."¹⁹

Therefore, the evidence of record does not establish that this position is significantly different from other coach and scout positions such that it refutes the *Handbook's* information to the effect that a bachelor's degree in a specific specialty, or its equivalent, is not required for entry into the occupation. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than coach and scout positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

The petitioner claims that the beneficiary's academic background will assist her in carrying out the duties of the proffered position. However, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area (or its equivalent). The petitioner does not sufficiently explain or clarify which of the duties, if any, of the proffered position would be so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. Upon review of the record of proceeding, we find that the petitioner has failed to establish the proffered position as satisfying the second prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. We usually review the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

¹⁹ For additional information on wage levels, see U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

To merit approval of the petition under this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency in its prior recruiting and hiring for the position. Further, it should be noted that the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. In the instant case, the record does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or the equivalent.

While a petitioner may believe or otherwise assert that a proffered position requires a specific degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the petitioner artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. See *Defensor v. Meissner*, 201 F.3d at 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. See § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. See generally *Defensor v. Meissner*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. See *id.* at 388.

With the initial petition, the petitioner submitted an internal job posting for a "Full-Time Tennis Coach," dated March 2012. The posting indicates that the position requires a "Bachelor's or higher degree in Sports Management or Business Administration, or a related sports or business-related degree, or equivalent." The initial record also included the petitioner's advertisement for a "Full Time Juinor Tennis Coach" which listed a Bachelor's degree in physical education, sports management, business administration, or a similar sports or business related field or its equivalent.

The advertisement did not indicate if the bachelor's degree was preferred or required. Notably, this advertisement has the same duties as listed in the petitioner's March 11, 2013 letter of support. However, the advertised position's academic requirement is different from the petitioner's requirement as indicated in the March 11, 2013 letter of support.

We have also reviewed the petitioner's submitted printouts of bios of 14 tennis coaches from its website. In response to the director's RFE, the petitioner provided resumes of 25 tennis coaches. Notably, the petitioner did not submit the academic credentials of these individuals, e.g. copies of diplomas and transcripts. The petitioner should note that the evidentiary weight of a resume is insignificant. As previously noted, it represents a claim by an individual, rather than evidence to support that claim. In the instant case, no further documentation was submitted of the individuals' asserted credentials.²⁰ Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Moreover, the petitioner stated in the Form I-129 petition that it has 678 employees and was established in 2012 (approximately one year prior to the submission of the H-1B petition). The

²⁰ On appeal, counsel submitted an advisory opinion from [REDACTED] of [REDACTED] to state that all the coaches have the education and experience equivalent to a U.S. bachelor's degree in specific specialty. As previously stated, we need not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764; see also *Matter of Obaigbena*, 19 I&N Dec. 533. However, upon review of this document, we find it is insufficient to establish the petitioner's employees' credentials. First, Mr. [REDACTED] states that his assessments are based on information contained in resumes which he presumes are correct. Again, resumes alone are insufficient as evidence to support the claims made therein. Mr. [REDACTED] does not indicate he reviewed any actual credentials of the petitioner's twelve employees whose education and experience he claims to have assessed.

Second, these "assessments" do not meet the requirements under 8 C.F.R. § 214.2(h)(4)(iii)(D)(3) because a credential evaluation service's evaluation is limited to education only, not training and/or work experience. Specifically, the evaluator does not claim or provide any documentation to demonstrate that he has the authority to grant college-level credit for *work experience* in the specialty (nor does he indicate that he is affiliated with a university that has a program for granting such credit based on an individual's work experience).

Furthermore, there is no independent evidence in the record from appropriate officials, such as deans or provosts, to establish that, at the time of the evaluation, the evaluator was, in the language of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(I), "an official [with] authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience." Thus, the evaluator has not established that he is competent under 8 C.F.R. § 214.2(h)(4)(iii)(D)(I) to evaluate the educational equivalency of the petitioner's employees' work experience. Accordingly, these "assessments" do not meet the standard of 8 C.F.R. § 214.2(h)(4)(iii)(D)(I) for competency to render to USCIS an opinion on the educational equivalency of any individual's work experience.

petitioner did not provide any further information or evidence regarding its recruiting history for the position advertised. Consequently, it cannot be determined how representative one job posting and 25 resumes are of the petitioner's normal recruiting and hiring practices for the proffered position. Without further information, the submission is not persuasive in establishing that the petitioner normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the position.

Upon review of the record, the petitioner has not provided sufficient probative evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Thus, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

On appeal, counsel asserts that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. In the instant case, the petitioner submitted documentation regarding its business operations, including the documentation previously outlined. Upon review of the record of the proceeding, including the information submitted on appeal, we find that relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. That is, the proposed duties have not been described with sufficient specificity to establish that they are more specialized and complex than positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent.

We incorporate our earlier discussion and analysis regarding the duties of the proffered position, and the designation of the proffered position in the LCA as a Level II position (out of four possible wage-levels). This designation is only appropriate for positions for which the petitioner expects the beneficiary to have a good understanding of the occupation and to perform moderately complex tasks that require limited judgment relative to others within the occupation. The designation of the proffered position as a Level II position is not consistent with claims that the nature of the specific duties of the proffered position is specialized and complex. Without further evidence, it is simply not credible that the petitioner's proffered position is one with specialized and complex duties compared to others within the occupation as such a position would likely be classified at a higher-level, such as a Level III (experienced) or IV (fully competent) position, requiring a substantially higher prevailing wage.²¹ As previously discussed, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."

²¹ If the proffered position were designated as a higher level position, the prevailing wage for the occupational category in [REDACTED] Florida at that time would have been \$38,280 per year for a Level III position, and \$46,030 per year for a Level IV position.

The petitioner has submitted inadequate probative evidence to satisfy this criterion of the regulations. Thus, the petitioner has not established that the duties of the position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. We, therefore, conclude that the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

III. CONCLUSION AND ORDER

An application or petition that fails to comply with the technical requirements of the law may be denied by us even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that we abused our discretion with respect to all of our enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.